UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL HOEY, Individually and on behalf of all others similarly situated,

Plaintiff,

-against-

COUNTY OF SUFFOLK,

Defendant.

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Civil Action No.

CLASS AND COLLECTIVE ACTION COMPLAINT

Plaintiff, Michael Hoey, individually and on behalf of all others similarly situated, by and through his undersigned counsel, as and for his Complaint against Defendant, County of Suffolk ("Defendant") respectfully alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action under the Fair Labor Standards Act (hereinafter the "FLSA"), 29 U.S.C. §§ 201 et seq., the New York Labor Articles 6 and 19, and the New York Codes, Rules, and Regulations 142-2.2 (hereinafter the "New York Labor Articles") to recover unpaid overtime compensation and for other relief. This action is brought as a collective action pursuant to 29 U.S.C. §216(b) and as a state-law class action under Fed. R. Civ. P. 23(b)(3).

2. Additionally, plaintiff brings this action seeking a declaratory judgment that defendant's policy and practice of suffering and permitting Emergency Service Dispatchers ("ESDs") working for the Suffolk County Department of Fire, Rescue, and Emergency Services ("FRES") to work up to six (6) days a year without being paid any compensation at all violates the FLSA and New York Labor Law ("NYLL").

3. Further, plaintiff brings this action seeking a permanent injunction enjoining defendant from continuing the illegal practice of suffering and permitting ESDs working for FRES to work up to six (6) days a year without being paid any compensation at all.

4. Jurisdiction over plaintiff's FLSA claims is based upon Section 216(b) of the FLSA, 29 U.S.C. § 216(b), and upon 28 U.S.C. §1331.

5. The Court has supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. §1367(a) because these claims are so related to the FLSA claims that they form part of the same case or controversy.

6. Venue in this district is appropriate under 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to these claims occurred in this judicial district.

PARTIES

7. Plaintiff Michael Hoey ("Plaintiff") is a resident of Suffolk County, New York.

8. Plaintiff has been employed by Defendant as an ESD working for FRES for at least the last six (6) years.

9. Defendant County of Suffolk is a municipal corporation organized under the laws of the State of New York.

10. Suffolk County has a number of departments or instrumentalities that fall under its municipal authority including FRES.

FACTS

11. Defendant employs ESDs that work for FRES located at 30 East Avenue, Yaphank, New York.

12. Upon information and belief, there are approximately fifty (50) ESDs currently employed by defendant and working for FRES.

13. ESDs handle fire or related 911 calls and then dispatch services for emergency response.

14. ESDs are paid by the hour.

15. ESDs are categorized as either ESD I, ESD II, or ESD III.

16. Currently, there is only one ESD III.

17. The remaining ESDs are either ESD Is or ESD IIs.

18. Plaintiff is currently employed as an ESD II.

19. ESD Is work three different shifts – 7:30 a.m. to 3:30 p.m., 3:30 p.m. to 11:30 p.m., and 11:30 p.m. to 8:00 a.m.

20. ESD IIs work three different shifts – 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.

21. Plaintiff currently works the 11:00 p.m. to 7:00 a.m. shift.

22. ESDs are not given uninterrupted meal breaks each shift.

23. ESDs work five (5) shifts in a row, have off for two (2) days, and then work five (5) shifts in a row and have off for three (3) days.

24. ESDs are paid overtime compensation or one and a half times their regular rates of pay when they work more than 40 hours in a week.

25. However, at the beginning of each year defendant provides the ESDs with their work schedules.

26. These work schedules provide the ESDs with up to six (6) extra days each year that the ESDs are assigned to work their shifts without being paid their regular wages or overtime compensation.

27. Plaintiff has worked the 11:00 p.m. to 7:00 a.m. shift for at least the last six (6) years.

28. During the years 2010, 2011, 2015, and 2016, Plaintiff has been subject to defendant's policy and practice where he was suffered and permitted to work up to an extra six (6) shifts per year without being paid any compensation at all.

29. During the years 2010, 2011, 2015, and 2016, the ESDs working for FRES were all subjected to defendant's policy and practice where they were suffered and permitted to work up to an extra six (6) shifts per year without being paid any compensation at all.

30. During the years 2010, 2011, 2015, and 2016, when plaintiff worked up to six (6) extra shifts per year, he worked at least 48 hours during each of those weeks without being paid his regular rate of pay or time and a half his regular rate of pay.

31. During this time, when the ESDs worked up to six (6) extra shifts per year, they worked at least 48 hours each of those weeks without being paid their regular rates of pay or time and a half their regular rates of pay.

32. Defendant managed plaintiff and other similarly situated employees' employment, including the amount of overtime worked. Defendant dictated, controlled, and ratified the wage and hour and all related employee compensation policies.

33. Defendant's failures to pay proper wages in a timely manner were made without good faith, willfully, and with a reckless disregard for plaintiff's rights; and plaintiff has been damaged by such failures.

GENERAL ALLEGATIONS

34. Plaintiff, individually, and on behalf of all similarly situated current and former employees of the Defendant, including its subsidiaries and affiliated companies, bring this action

as a collective action under the FLSA to recover, *inter alia*, unpaid overtime compensation, regular wages, and statutory penalties owed to plaintiff and all other similarly situated employees.

35. Defendant's failure to pay plaintiff and all other similarly situated employees regular wages and overtime compensation when these employees worked up to six (6) extra shifts per year as alleged herein has violated the FLSA and the NYLL.

36. As a result of these unlawful practices, plaintiff and the similarly situated employees have suffered a loss of wages.

COLLECTIVE ACTION ALLEGATIONS

37. Plaintiff seeks to proceed as a collective action pursuant to 29 U.S.C. §216(b) on behalf of himself and the following class of persons:

> All ESDs who worked for FRES at any time from six (6) years prior to the filing of this action to the entry of judgment in this action who give their consent, in writing, to become party plaintiffs (hereinafter the "FLSA Class").

38. Plaintiff and other members of the FLSA Class are similarly situated inasmuch as, *inter alia*, they were required to work in excess of 40 hours a week without being paid overtime compensation.

39. Defendant has known that Plaintiff and similarly situated employees have performed work that has required overtime compensation. Nonetheless, Defendant has operated under a scheme to deprive Plaintiff and the other members of the FLSA Class of overtime compensation by failing to properly compensate them for all time worked.

40. Defendant's conduct, as alleged herein, has been willful and has caused significant damage to the Plaintiff and the similarly situated employees.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT
29 U.S.C. §201 ET SEQ.
FAILURE TO COMPENSATE FOR OVERTIME

41. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

42. The FLSA regulates the payment of wages by employers whose employees are "engaged in commerce or engaged in the production of goods for commerce, or are employed in an enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 207(a)(1).

43. Defendant was and is subject to the overtime pay requirements of the FLSA because defendant is an enterprise engaged in commerce or in the production of goods for commerce.

44. Upon information and belief, the gross annual volume of sales made or business done by defendant for the years 2016, 2015, and 2014 was not less than $500,000.00.

45. At all times relevant to this action, Plaintiff and the similarly situated employees have been entitled to the rights, benefits, and protections granted by the FLSA, 29 U.S.C. § 207, *et seq*.

46. Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to at least one and one half times the employee's regular rate of pay, for all hours worked in excess of 40 per week.

47. By the above-alleged conduct, defendant has violated the FLSA by failing to pay the FLSA collective action plaintiffs overtime compensation as required by the FLSA.

48. Section 13 of the FLSA, 29 U.S.C. §213, exempts certain categories of employees from the overtime compensation requirements set forth in Section 207(a)(1) of the FLSA.

However, none of the Section 13 exemptions apply to plaintiff or the similarly situated employees because they have not met the requirements for coverage under the exemptions.

49. Plaintiff and the similarly situated employees are victims of a uniform company-wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all members of the FLSA collective action and has deprived them of overtime compensation.

50. Defendant has acted willfully and have either known that its conduct violated the FLSA or have shown reckless disregard for the matter of whether their conduct violated the FLSA. Defendant has not acted in good faith with respect to the conduct alleged herein.

51. As a result of Defendant's violations of the FLSA, Plaintiff and all others similarly situated have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation, pursuant to 29 U.S.C. § 216(b).

STATE-WIDE CLASS ALLEGATIONS

52. Plaintiff also seeks to maintain this action as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of himself individually and all other similarly situated employees who, during the relevant statute of limitations period, have worked as ESDs with respect to the claims pleaded in Counts II, III, IV, V, and VI of the complaint.

53. Fed. R. Civ. P. 23(b)(3) provides that a cause of action may be maintained as a class action if the following elements are met:

(a) The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

(b) There are questions of law or fact common to the class which predominate over and questions affecting only individual members;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) The representative parties will fairly and adequately protect the interests of the class; and

(e) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Class Definitions

54. Plaintiff seeks certification of a class consisting of the following individuals:

All ESDs who worked for FRES at any time from six years prior to the filing of this Action to the entry of judgment in this Action (hereinafter the "New York Class").

Numerosity

55. Plaintiff satisfies the numerosity requirements as the proposed class is so numerous that joinder of all members is impracticable.

56. The proposed class can be identified and located using the Defendant's payroll and personnel records. Class members may be informed of the pendency of this action by direct mail and/or published and broadcast notice.

Common Questions of Fact or Law

57. There are questions of fact and law common to each class member which predominate over any questions affecting only individual members.

58 These questions predominate over any questions affecting only individual persons. With respect to considerations of consistency, economy, efficiency, fairness, and equity, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Typicality

59. Plaintiff's claims are typical of the claims of the class members. As a result of Defendants' unlawful conduct, Plaintiff suffered similar injuries as those suffered by other members of the respective class he seeks to represent.

Adequacy

60. Plaintiff is an adequate representative of the class he seeks to represent because he is a members of such class, and his interests do not conflict with the interests of the members of the class he seeks to represent. The interests of the class members will be fairly and adequately protected by Plaintiff and his undersigned counsel. Plaintiff has hired competent attorneys who are experienced in class action litigation of this type and who are committed to the prosecution of this Action.

Superiority

61. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense if these claims were brought individually.

62. Moreover, as the damages suffered by each class member may be relatively small, the expenses and burden of individual litigation would make it difficult for plaintiff to bring individual claims.

63. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for

Defendant and/or substantially impair or impede the ability of class members to protect their interests.

COUNT II
VIOLATION OF THE NEW YORK LABOR ARTICLE 6 AND 19
FAILURE TO PAY OVERTIME UNDER NEW YORK LABOR LAW

64. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

65. At all times relevant to this Action, Plaintiff was employed by Defendant within the meaning of New York Labor Law §§2 and 651.

66. Under New York law, an employee must be paid overtime, equal to one and one half times the employee's regular rate of pay, for all hours worked in excess of 40 per week in the manner and methods provided by the FLSA. 12 NYCRR §142-2.2.

67. By the above-alleged conduct, Defendant has failed to pay members of the New York Class overtime compensation as required by the New York Labor Articles.

68. Plaintiff and the other members of the New York Class are not exempt from the overtime provisions of the New York Labor Articles, because they have not met the requirements for any of the reduced number of exemptions available under New York law.

69. Plaintiff and the other members of the New York Class are victims of a uniform company-wide compensation policy. This uniform policy, in violation of the New York Labor Articles, has been applied to all members of the New York Class and has deprived them of proper overtime compensation.

70. Defendant has acted willfully and has either known that its conduct violated the New York Labor Articles or has shown a reckless disregard for the matter of whether its conduct

violated the New York Labor Articles. Defendant has not acted in good faith with respect to the conduct alleged herein.

71. As a result of Defendant's violations of the NYLL, Plaintiff and all others members of the New York class have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation, pursuant to the NYLL.

COUNT III
NYLL Minimum Wage Claim

72. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

73. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of New York Labor Law §§2 and 651.

74. Defendant willfully failed to pay Plaintiff and members of the class at the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law §652.

75. As a result of Defendant's unlawful practices, Plaintiff and the members of the class have suffered a loss of wages.

76. As a result of defendant's violation of the NYLL and the regulations promulgated therein, Plaintiff and the members of the class have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation.

COUNT IV
NYLL 191 and 198

77. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

78. That defendant suffered and permitted plaintiff and members of the class to work up to six (6) shifts per year without compensating them with their regular rates of pay.

79. The defendant's failures to pay plaintiff and the class their regular rates of pay when they worked up to six (6) extra shifts per year constituted outrageous conduct, made knowingly and willfully, or with a reckless indifference to plaintiff's rights.

80. As a result of defendant's violation of the NYLL and the regulations promulgated therein, plaintiff and the class have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation.

COUNT V
Declaratory Judgment

81. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

82. That defendant has a policy and practice of suffering and permitting ESDs working for FRES to work up to six (6) days a year without being paid any compensation.

83. That such policy and practice violates the FLSA and NYLL.

84. That plaintiff and other ESDs working for FRES have complained and have unsuccessfully sought a change in defendant's policy and practice.

85. That plaintiff and other ESDs have notified defendant that their rights to be compensated for working up to six (6) days a year have been violated.

86. That defendant has taken no action at all to change this illegal policy and practice and continue to have plaintiff and other ESDs work up to six (6) days a year without being paid any compensation.

87. By reason of the foregoing, an actual and justiciable controversy exists between the ESDs working for FRES and defendant.

88. Plaintiff and the class, therefore, seek a declaratory judgment that defendant's policy and practice complained of herein is illegal and violates the FLSA and NYLL.

COUNT VI
Permanent Injunction

89. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

90. Plaintiff and the class are likely to succeed on the merits of their claims.

91. Plaintiff and the class will suffer irreparable harm if the Court does not issue an injunction.

92. Plaintiff and the class have no adequate remedy at law.

93. Plaintiff and the class are entitled to a permanent injunction enjoining the defendant from continuing to have an illegal policy and practice of suffering and permitting ESDs to work an extra six (6) shifts a year without paying them any compensation at all.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, by and through his attorneys, Neil H. Greenberg & Associates, P.C., demands judgment against Defendant and in favor of Plaintiff and all others similarly situated, for a sum that will properly, adequately, and completely compensate Plaintiff and all others similarly situated for the nature, extent, and duration of the damages, costs of this action, and as follows:

A. Order the Defendant to file with this Court and furnish to counsel a list of all names and addresses of all ESDs who currently work for or who have worked for Defendant within the last six years;

B. Authorize Plaintiffs' counsel to issue a notice at the earliest possible time to all current and former ESDs who have worked for FRES during the six years immediately preceding this Action, informing them that this Action has been filed, of the nature of the Action, and of their right to opt into this lawsuit if they worked in excess of 40 hours in a week during the liability period, for which they were not paid the FLSA-required overtime;

C. Authorize Plaintiff to certify his claims under the state law of New York;

D. Declare and find that the Defendant committed one or more of the following acts:

1. Violated provisions of the FLSA by failing to pay overtime wages to Plaintiff and similarly situated persons who opt into this Action;

2. Willfully violated the overtime provisions of the FLSA;

3. Violated the provisions of the NYLL by failing to pay overtime wages, minimum wages, and regular wages to Plaintiff and all class members;

4. Willfully violated the applicable provisions of the NYLL.

E. Award compensatory damages, including all overtime compensation owed, in an amount according to proof;

F. Award interest on all NYLL claims and other compensation due accruing from the date such amounts were due;

G. Award all costs, attorney's fees incurred in prosecuting this action as well as liquidated damages under the FLSA and NYLL.

H. Grant leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;

I. Issue a declaratory judgment that the policy and practice complained of herein is illegal under the FLSA and NYLL;

J. Issue a permanent injunction enjoining defendant from continuing with the policy and practice complained of herein; and

K. Provide such further relief as the Court deems just and equitable.

Dated: Massapequa, New York
November 22, 2016

Neil H. Greenberg & Associates, P.C.
Attorneys for the Plaintiff
By: Neil H. Greenberg, Esq.
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FAIR LABOR STANDARDS ACT CONSENT FORM

I, the undersigned, consent to be a party in **Hoey v. County of Suffolk,** in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. section 216(b).

Dated: Westbury, New York
November 22, 2016

Michael Hoey